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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 138.

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED JULY 10, 1902.

(18,230.)

16245

(18,230.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1901.

No. 377.

THE PULLMAN COMPANY, PLAINTIFF IN ERROR,

*vs.*

WIRT ADAMS, STATE REVENUE AGENT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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1 Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the first Monday, the 4th day, of March, A. D. 1901.

Present: The Honorable Albert H. Whitfield, chief justice and the Honorable S. H. Terral and the Honorable S. S. Calhoon, associate justices; E. W. Brown, clerk of said court, in person and by W. J. Brown, Jr., his deputy. General J. A. Smith, marshal and Thomas Grant, porter.

Be it remembered, that heretofore, to wit, on the 2nd day of March, A. D. 1901, there was filed in the clerk's office of said court a certain transcript of the record from the circuit court of Hinds county, Mississippi, first district, which with the endorsements thereon is in words and figures following, to wit:

2 *Organization of Court.*

STATE OF MISSISSIPPI,
*County of Hinds.*

Be it remembered that a regular term of the circuit court of the county of Hinds and State of Mississippi was begun and holden at the court-house of said county in the city of Jackson, in first district of said Hinds county, on the 2nd Monday of January, 1901, it being the 14th day of said month, and the time and place fixed by law for holding said court, there were present: Hon. Rob't Powell, judge of the 7th circuit court district, State of Mississippi, J. B. Greaves, Esq., district attorney, R. J. Harding, sheriff, and J. T. White, clerk of said court.

And on the — day of said term of court, the same being — and the — day of January, 1901, came on to be heard the following-entitled cause, the papers and proceedings of which are as follows:

*Declaration.*

In the Circuit Court of the First District of Hinds County, Mississippi.

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY.

Comes the plaintiff, Wirt Adams the duly elected, qualified and acting State revenue agent in and for the State of Mississippi, who here sues in his said official capacity for the use and benefit of said State and complains of the defendant The Pullman Palace Car Company a corporation existing under the laws of the State of Illinois and engaged in the business of a sleeping or palace car company and owning and operating sleeping cars in the State of Mississippi,

which said cars are run and operated in and through said
3 district and county and upon each of said cars defendant has its agent or conductor who has charge and control of the same for defendant, and for cause of action plaintiff shows the following:

That during the year 1892 and the year 1893 and the year 1894 the said defendant being a sleeping car company as aforesaid operated and ran its sleeping and palace cars over and upon two thousand miles of railroad track in the State of Mississippi, upon various lines of railroads therein and then and there offered to take and took passengers for hire upon its said sleeping or palace cars and carried them from various towns in Mississippi along its route to other and various towns in Mississippi (said traffic being wholly within the State of Mississippi) and so defendant carried passengers for hire upon its said sleeping or palace cars from one point to another point in the State of Mississippi.

That during all of said time there was imposed by law in Mississippi a privilege tax for each and every of said years, on each sleeping and palace car company carrying passengers from one point to another in the State of Mississippi, one hundred dollars, and in addition twenty-five cents per mile for each mile of railroad track over which the company runs its cars.

That under and by virtue of the laws of the State of Mississippi and by reason of the operation and running of said cars as aforesaid the said defendant became and was indebted, liable and bound to pay to the State of Mississippi the sum of one hundred dollars for each and every of said years, to wit: three hundred dollars, and in addition thereto it became indebted to and bound to pay said State twenty-five cents for each and every of said years for each and every of said two thousand miles, to wit: fifteen hundred dollars, said liability and indebtedness amounting to and being in the aggregate the sum of eighteen hundred dollars.

That the said defendant being indebted to the said State as aforesaid, and although often requested to pay said indebtedness,
4 has neglected, failed and refused to pay the same or any part thereof to the damage of said State in the sum of eighteen hundred dollars.

Wherefore the said plaintiff suing as revenue agent as aforesaid brings this his suit against said defendant and prays judgment for said sum of eighteen hundred dollars ($1,800.00) together with interest and cost of suit.

HARPER & POTTER,
*Attorneys for Plaintiff.*

Endorsed: Filed September 25, 1900. J. T. White, clerk, by E. D. Fondren, D. C.

*Circuit Court Summons.*

The State of Mississippi to the sheriff of Hinds county, Greeting:

We commend you hereby that you summon The Pullman Palace Car Company, defendant, in to be found in your county, so that it

be before the circuit court to be holden in and for the first district of said county at the court-house thereof, in the city of Jackson, on the 2nd Monday of January, 1901, to answer the declaration of Wirt Adams, State revenue agent etc., plaintiff, against the said defendant now on file in the clerk's office of said court, and have then and there this summons.

Witness the Hon. Robert Powell, judge of the seventh judicial district of this State the 3rd Monday of June, 1900, and seal of said court.

Issued 26th September, 1900.

J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

5 The declaration on file is founded on a suit against defendant for the non-payment of privilege taxes for the years 1892, 1893 and 1894. Total amount sued for is $1,800.00 and interest and costs. The amount actually demanded in this suit is the sum stated in the declaration, and lawful interest and costs. Judgment will be demanded at return term.

HARPER & POTTER, *P. Q.*

Declaration filed and summons issued.
J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

Endorsed.

Executed on the Pullman Palace Car Company by personally delivering to A. E. Sothren, their conductor, on Pullman palace car "Ascolea" a true copy of this writ Sept. 27, 1900.

R. J. HARDING, *Sheriff*,
By J. W. CLINGHAM, *D. S.*

| | |
|---|---|
| Ex | $1.50 |
| E. & R | .50 |
| | $2.00 |

*Demurrer to Declaration.*

In the Circuit Court of Hinds County, Mississippi, First District, January Term, 1901.

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY.

Comes the defendant, The Pullman Company, by its attorneys, and not confessing, etc., doth demur to plaintiff's declaration and for cause of demurrer assigns the following:

1. The declaration does not show that the defendant had an opportunity to pay the taxes in respect to which delinquency is
6 averred, and there was no provision of law affording to the defendant such opportunity.

2. The declaration does not aver that the tax collectors of the several counties in which defendant is alleged to have operated its cars have refused or willfully failed to collect said taxes.

3. The declaration does not aver that the amount of taxes payable by defendant for the years mentioned was ever legally ascertained or authenticated to any one having authority to collect.

Wherefore etc., defendant prays judgment etc.

McWILLIE & THOMPSON,
*Attorneys for Defendant.*

Endorsed: Filed January 14, 1901. J. T. White, clerk, by E. D. Fondren, D. C.

*Judgment Overruling Defendant's Demurrer.*

WIRT ADAMS, Revenue Agent, etc.,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

This day came on to be heard the demurrer of the defendant to plaintiff's declaration and the court having heard argument and being fully advised thereof, doth order and adjudge that said demurrer be and the same is hereby overruled, and it is further ordered that defendant have leave to plead during the next two days, plaintiff in open court waiving affidavit of merits on defendant's application to plead over.

*Defendant's First Plea.*

In the Circuit Court of Hinds County, Mississippi, First District.

7 WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

Comes the defendant, The Pullman Company, by its attorneys, herein sued as the Pullman Palace Car Company, and for plea herein says it is not indebted to the State of Mississippi in the said sum demanded in the plaintiff's declaration, nor of any part thereof, and of this it puts itself upon the country.

McWILLIE & THOMPSON,
*Attorneys for Defendant.*

Filed January 15, 1901.
J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

*Defendant's Second Plea.*

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

And for further plea in this behalf defendant says that it is a foreign corporation incorporated by and under the laws of the State of

Illinois and having its domicile in the city of Chicago therein; that during the said years 1892, 1893 and 1894 it had no property, office nor resident agent or employee in the State of Mississippi engaged in the operation of the business mentioned in plaintiff's declaration, and that defendant's palace and sleeping cars are and were the only cars of such character ever run in the State of Mississippi; that the sleeping cars and palace cars in use in Mississippi were manufactured by defendant in Illinois and not run by defendant in Mississippi, but were run therein by the several railroad companies hauling the same, under contracts by the terms whereof defendant for a specified consideration was required to furnish the said cars, and, as a
8 part of such consideration, acquired a right to charge each railroad passenger who should ride therein for a reserved seat in the daytime and a bed at night; that the said railroads ran and hauled sleeping cars and palace cars into and through the State of Mississippi; that the said cars were used and employed in interstate commerce, and to points in Mississippi to points outside of said State, from points outside of to points in Mississippi and from points outside of through that State to other points outside of the same; that the passengers carried on defendant's cars during said years from one point to another within the State of Mississippi laying a tax upon the business so operated and imposing penalties of fine and imprisonment for the violation thereof was, and is, as to this defendant, in contravention of section 8, article 1 of the Constitution of the United States committing to the Congress of the United States the regulation of commerce between the States, and is and was null and void; and this defendant is ready to verify.

McWILLIE & THOMPSON,
*Attorneys for Defendant.*

Filed January 15, 1901.
J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

*Defendant's Third Plea.*

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

And for further plea in this behalf defendant says that it is a foreign corporation incorporated by and under the laws of the State of Illinois and has its domicile in the city of Chicago therein and in the years 1892, 1893 and 1894 had no property, office nor resident agents or employees in the State of Mississippi engaged in
9 the business mentioned in plaintiff's declaration and that defendant's sleeping and palace cars are and were the only cars of such character ever run in the State of Mississippi; that prior to the first day of November, 1890, when defendant by the constitution of the State of Mississippi was made a common carrier within said State, and ever since the first day of November, 1890 the sleeping cars and palace cars of the defendant in said declaration men-

tioned were used and employed in said State in an interstate business, on railway lines extending from other States into Mississippi and through Mississippi into other States and were run from points in to points outside of Mississippi and through Mississippi from points outside of to other points outside of said State; that the profits realized by defendant from persons going from one point in Mississippi to another point in said State on its cars while used and employed in said State as aforesaid have never equaled the expenses properly chargeable against the same, and the deficit thus arising has always operated as a burden upon its interstate business; and defendant avers that the law of Mississippi of 1892 whereby defendant was required to pay a tax on its business under the penalties of fine and imprisonment after being made a common carrier as aforesaid was and is as to this defendant in contravention of section 8, article 1 of the Constitution of the United States whereby the regulation of commerce between the States was committed to the Congress of the United States and was and is null and void; and this defendant is ready to verify.

McWILLIE & THOMPSON,
*Attorneys for Defendant.*

Filed January 15, 1901.

J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

10 *Demurrer to Defendant's Second Plea.*

In the Circuit Court of the First District of Hinds County, Mississippi, January Term, 1901.

WIRT ADAMS, State Revenue Agent,
*v.*
THE PULLMAN COMPANY.

Comes the plaintiff Wirt Adams, State revenue agent, and as to the second plea by defendant pleaded to his declaration, says, that the matters therein mentioned are not sufficient in law to bar him from maintaining his aforesaid action. Wherefore plaintiff demurs to said second plea, and for cause of demurrer assigns the following reasons:

1. Because said plea sets up no valid defense to plaintiff's action.
2. Because said plea is a departure from the declaration.
3. Because said plea is insufficient in law.

And for other reasons to be assigned at the hearing.

HARPER & POTTER,
*Attorneys for Plaintiff.*

Filed January 17, 1901.

J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

*Demurrer to Defendant's Third Plea.*

In the Circuit Court of the First District of Hinds County, Mississippi, January Term, 1901.

WIRT ADAMS, State Revenue Agent,
*v.*
THE PULLMAN COMPANY.

Comes the plaintiff Wirt Adams, State revenue agent, and
11 as to *to* the third plea by defendant pleaded to his declaration, says:

That the matters therein contained are not sufficient in law to bar him from maintaining his aforesaid action. Wherefore plaintiff demurs to said third plea and for cause of demurrer assigns the following reasons.

1. Because said plea sets up no valid defense to plaintiff's action.
2. Because said plea is a departure from the declaration.
3. Because said plea is insufficient in law.

And for other reasons to be assigned at the hearing hereof.

Wherefore plaintiff prays judgment etc.

HARPER & POTTER,
*Attorneys for Plaintiff.*

Filed January 17, 1901.
J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

*Order Sustaining Demurrer to Defendant's Second Plea.*

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

Came on to be heard the demurrer of plaintiff to the second plea of defendant and the court having fully heard and considered the same, doth order and adjudge that the said demurrer be and the same is hereby sustained and that defendant be allowed to plead forthwith. To which action of the court sustaining said demurrer the defendant then and there accepted.

*Order Sustaining Demurrer to Defendant's Third Plea.*

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

12 Came on to be heard the demurrer of the plaintiff to the third plea of the defendant and the court having fully heard and considered the same doth now order and adjudge that said demurrer be sustained and that the defendant have leave to plead further forthwith. To the action of the court in sustaining said demurrer the defendant then and there excepted.

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY, or PULLMAN COMPANY. } 3476.

*Instruction for Plaintiff.*

1. The court instructs the jury to find for plaintiff in the sum of $100.00 for each of the years 1892, 1893 and 1894 and the further sum of twenty-five cents for each and every of the miles of track over which defendant is shown by the evidence to have operated its cars and did business in the State of Mississippi for 1892 also 1893 and also 1894.

Given.

Filed February 6th, 1901.
J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

In the Circuit Court of the First District of Hinds County, Mississippi.

WIRT ADAMS, State Revenue Agent,
*v.*
THE PULLMAN PALACE — COMPANY. } 3476.

*Bill of Exceptions.*

Be it remembered that this cause was called and came on for trial on the 6th day of February, 1901, the same being a day
13 of the regular January term, 1901, when the following were agreed to be the facts in the case, to wit:

It is agreed between the plaintiff and the defendant in the above-styled cause that for and during each of the years 1892, 1893 and 1894 the defendant's sleeping cars were carried by various railroad companies over 1,536 miles of railroad track within the State of Mississippi, that such sleeping cars were under the control of the defendant, by its conductors and other employees and that the defendant offered to take and took passengers in each of said years over said distance of said track in Mississippi, for hire, in this: That it collected fares for berths and seats upon its said sleeping cars from point to point wholly within the State of Mississippi, persons going from one point to another point within Mississippi. That such fares went to the defendant and not to the said railroad companies, who only carried such sleeping cars of defendant under a contract with it.

That the defendant has never paid any privilege tax or had any privilege-tax license for any of said years to the State of Mississippi. That defendant was incorporated under the laws of Illinois as the "Pullman's Palace Car Company," and as a sleeping car company and that by act of the legislature of Illinois its name was changed in 1899 to that of "Pullman Company," which is its present name, both being the same incorporation. No point is to be made, how-

ever, on the name. That defendant was the only sleeping car company doing business in Mississippi during said years. That upon the trial of said cause in said court the defendant offered evidence to show that its receipts from persons going to one point in Mississippi to another point therein did not equal during said years its expenses properly chargeable against such receipts. To the introduction of such evidence the plaintiff objected and his objection was by the court sustained and the defendant then and there instantly excepted and its exceptions were allowed.

Defendant introduced in evidence the interrogatories pro-
14 pounded to defendant and the answers thereto which are in the words and figures following, to wit:

In the Circuit Court, First District, of Hinds County, Mississippi.

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

*Notice to Take Depositions of the Defendant.*

To the defendant, The Pullman Palace Car Company, or McWillie & Thompson, attorneys of record:

You will please take notice that the plaintiff in the above-styled case has this day filed in the office of said clerk of said court certain interrogatories to be answered by the Pullman Palace Car Company, as required by section 1761 Code of 1892, a copy of which interrogatories with a copy of the notice will be delivered to you.

HARPER & POTTER,
*Attorneys for State Revenue Agent.*

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

Interrogatories propounded by plaintiff to defendant in the above-styled cause, now pending in the circuit court, first district, of Hinds county, Mississippi, under section 1761, Code of 1892. Ananswers to the following interrogatories will be enforced under penalties therein provided.

Interrogatory No. 1. Are you now engaged in the sleeping or palace car business within the State of Mississippi, and were
15 you so engaged during the years 1892, 1893 and 1894 and how was your said business conducted within said State?

Interrogatory No. 2. Please state the name of each and every railroad in Mississippi upon which you ran your sleeping and palace cars during the years 1892, 1893 and 1894, and the number of miles over each of said roads upon which you operated your said cars in said State during said years.

Interrogatory No. 3. What was the total number of miles of railroad track in Mississippi over and upon which you ran your sleep-

ing and palace cars in the year 1892 and in the year 1893 and in the year 1894?

Interrogatory No. 4. State whether or not during the years 1892, 1893 and 1894 you offered to take passengers for hire upon your sleeping and palace cars from one point to another within the State of Mississippi.

Interrogatory No. 5. State whether or not during the years 1892, 1893 and 1894 you carried passengers for hire upon your sleeping and palace cars from one place to another within the State of Mississippi.

Interrogatory No. 6. State whether or not during the years 1892, 1893 and 1894 you carried passengers in your sleeping and palace cars from various points and towns in Mississippi to other points or places in said State, and did you not during said years carry passengers upon your said cars from one point in the State of Mississippi so that such carriage at times during all of said years was wholly within the State of Mississippi?

HARPER & POTTER,
*Attorneys for Plaintiff.*

16 *Answers to Interrogatories.*

In the Circuit Court of the First District of Hinds County, Mississippi.

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

STATE OF ILLINOIS,
*County of Cook,* } *ss:*

On this 26th day of December, A. D., 1900, personally appeared before the undersigned a notary public in and for the county and State aforesaid, A. S. WEINSHEIMER, who being first duly sworn, states upon oath that he is secretary, a superior officer and agent of the Pullman Company and that he appears for the purpose of answering certain interrogatories propounded by the plaintiff in the above-entitled cause now pending in the circuit court of the first district of Hinds county, Mississippi.

In answer to the first interrogatory he says:

That he attaches hereto and makes a part hereof, a copy of an act of the General Assembly of the State of Illinois incorporating Pullman's Palace Car Company, which shows the purpose for which the said company was incorporated; that upon the 30th day of December, 1899, the corporate name of the said company was, by due process of law, changed to "The Pullman Company;" that the corporate name of said company never has been "The Pullman Palace Car Company." He states that the Pullman Company is engaged in the business of manufacturing sleeping cars and furnishing such cars to railroad companies under contract for use by such railroad companies in operating their railroads through-

out the United States of America, the Dominion of Canada, the Republic of Mexico and in Europe; that it furnishes some such cars to railroads running into and through the State
17 of Mississippi, under contract with such railroad companies, and that Pullman's Palace Car Company was engaged in such business in the years 1892, 1893 and 1894. He further states that so far as such business was concerned in the years *in the years* 1892, 1893 and 1894, within the State of Mississippi, it consisted in the fact that in all such contracts with railroad companies Pullman's Palace Car Company, now the Pullman Company, in furnishing such cars to railroad companies to be used by such railroad companies in transporting a certain class of their passengers reserved to itself the right to charge a certain stipulated price, from such railroad passengers as might elect to ride in such cars, for a seat to be reserves by daytime and a place in which to sleep at night, and that it rented some such seats and berths to railroad passengers coming into said cars within the State of Mississippi; and that to this extent it was engaged in business in the State of Mississippi, but it was not engaged in any other business of any nature or character whatsoever within the State of Mississippi in said years.

In answer to second interrogatory he says:

Pullman's Palace Car Company did not run or operate its cars on any railroad; its cars were run and operated by the railroad companies, Pullman's Palace Car Company being simply permitted to collect a specific charge for a reserved seat by day or a bed at night, from such railroad passengers as elected to ride in said cars. Its cars were used by railroad companies within the State of Mississippi during the years 1892, 1893 and 1894 as shown in the following table:

| Railroads. | Miles of track. | | |
|---|---|---|---|
| | 1892. | 1893. | 1894. |
| Illinois Central | 301.62 | 301.62 | 389.45 |
| Kansas City, Memphis & Birm | 130.59 | 130.59 | 130.59 |
| Louisville & Nashv | 73.74 | 73.74 | 73.74 |
| Memphis & Charleston | 33.40 | 33.40 | 33.40 |
| Mobile & Ohio | 271.00 | 271.59 | 271.59 |
| Yazoo & Miss. Valley | 314.92 | 314.92 | 106.00 |
| Georgia Pacific | 96.78 | | |

18 All such cars were used from points outside the State of Mississippi to points within that State; or from points within that State to points outside of that State; or from points outside the State of Mississippi through the State to points outside of the State;

but none of such cars were used wholly within the State of Mississippi.

In answer to the third interrogatory, he says:

Pullman's Palace Car Company did not, in the years 1892, 1893 and 1894, run or operate sleeping cars. As stated in answer to the preceeding interrogatory, such cars were operated and run by railroad companies, and Pullman's Palace Car Company had no control over the running or operation of such cars. It was simply permitted by the railroad companies using such cars to charge a certain stipulated price for a reserved seat by daytime or a bed to sleep in by night from such railroad passengers as elected to ride in such cars. The *the* total number of miles of railroad track in the State of Mississippi over which such cars were used by railroad companies in the year 1892 was 1,222.05; in the year 1893, 1,125.86; in the year 1894, 1,004.77 miles.

In answer to the fourth interrogatory he says:

That Pullman's Palace Car Company during the years 1892, 1893 and 1894, did not offer to take and did not take passengers for hire upon its sleeping cars from one point to another within the State of Mississippi but did offer to take and did collect fares for berths and seats upon its sleeping cars, as above stated, from persons going from one point to another in Mississippi.

In answer to fifth interrogatory he says:

Not except as stated in answer to interrogatory 4.

In answer to sixth interrogatory he says:

Not except as stated in answer to interrogatory four.

A. S. WEINSHEIMER.

Sworn to before me and subscribed in my presence the day and year first above written.

L. E. McPHERSON,
*Notary Public.*

Filed January 7, 1901.
J. T. WHITE, *Clerk,*
By E. D. FONDREN, *D. C.*

19 This was all the evidence in the case.

That upon the above proof the plaintiff upon the trial before the court and jury asked, and the court gave, on behalf of the plaintiff the following instruction, to wit: The court instructs the jury to find for plaintiff in the sum of $100.00 for each of said years 1892, 1893, and 1894 and the further sum of twenty-five cents for each and every of the miles of track over which defendant is shown by the evidence to have operated its cars and did business in the State of Mississippi for 1892 also 1893 and also 1894.

To the giving of said instruction the defendant then and there excepted.

That thereupon the jury retired and presently brought in their verdict in the following form, to wit: We the jury find for the plaintiff and assess his damages at the sum of $1,492.00.

And that thereupon defendant filed its motion for a new trial,

which is to be found in the record, which motion coming on to be heard was duly considered by the court and overruled; to which action of the court in overruling said motion defendant then and there excepted and now here tenders this its bill of exceptions which it prays may be signed by the court and made a part of the record in said cause. All of which is accordingly done this 6th February, 1901.

ROBERT POWELL, *Judge.*

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

*Judgment.*

Came on for trial the above-styled cause and issue being joined, also came a jury of good and lawful men, to wit: S. S. Gowaw and eleven others who being duly empanelled and sworn, do now upon their o-ths say: "We the jury find for the plaintiff and assess the damages at the sum of $1,452.00." It is therefore considered
20 by the court and so ordered and adjudged that the plaintiff do have judgment, and that he, Wirt Adams, State revenue agent, for the use and benefit of the State of Mississippi do have and recover of and from the defendant, The Pullman Company, or as called in the pleadings, the Pullman Palace Car Company, but whose name is agreed to be the Pullman Company the sum of fourteen hundred and fifty-two dollars as assessed by the jury, with interest thereon at the rate of six per cent. per annum from date together with all costs of suit, for all of which let execution issue.

*Motion for New Trial.*

In the Circuit Court of Hinds County, First District, January Term, 1901.

WIRT ADAMS, State Revenue Agent,
*v.*
PULLMAN PALACE CAR COMPANY. } 3476.

Comes the defendant and by its attorneys and moves the court to set aside the verdict and grant a new trial in the above cause, and for ground of motion assigns the following:

1. The court erred in overruling defendant's demurrer to plaintiff's declaration.

2. The court erred in sustaining plaintiff's demurrer to defendant's pleas.

3. The court erred in excluding the evidence offered by the defendant to show that its receipts from passengers going from one point in Mississippi to another point therein were during the years mentioned in the declaration less than the expenses chargeable against such receipts.

4. The court erred in giving for the plaintiff a peremptory instruction to the jury to find for the plaintiff.

Wherefore etc.,

McWILLIE & THOMPSON,
*Attorneys for Defendant.*

21 *Order Overruling Motion for New Trial.*

WIRT ADAMS, State Revenue Agent,
*v.* } 3476.
PULLMAN PALACE CAR COMPANY.

Comes on to be heard the motion of defendant to set aside the verdict and judgment of the court and to grant a new trial for causes stated therein, and the same having been fully considered by the court, it is now ordered and adjudged that said motion be and the same is hereby overruled, to which action of the court in overruling said motion the defendant then and there excepted and tendered its bill of exceptions which was signed by the court, filed and made part of the record in said cause.

*Appeal Bond.*

Know all men by these presents that we the Pullman Company principal and T. A. McWillie and R. H. Thompson sureties are held and bound unto Wirt Adams, State revenue agent in the sum of five hundred dollars for the payment of which well and truly to be made we bind ourselves jointly and severally firmly by these presents signed and dated the 21st day of February A. D. 1901.

The condition of this bond is such that whereas on the 6th day of February A. D. 1901, in a certain cause pending in the circuit court of Hinds county 1st district the said Wirt Adams, State revenue agent, plaintiff recovered judgment against the said Pullman Company, defendant in said cause for the sum of $1,452.00 and costs; and whereas the said defendant hath prayed an appeal from said judgment to the next term of the supreme court of Mississippi.

Now, therefore, if the said defendant The Pullman Company shall well and truly pay all the costs of said appeal in case the said judgment be affirmed, then the above obligation to be void other-
22 wise to remain in full force and effect.

THE PULLMAN COMPANY,
By McWILLIE & THOMPSON, *Att'ys.*
T. A. McWILLIE.
R. H. THOMPSON.

Filed and approved February 21st, 1901.

J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

*Clerk's Certificate.*

STATE OF MISSISSIPPI, }
*Hinds County.* }

I J. T. White, clerk of the circuit court in and for said county and State de hereby certify that the annexed and foregoing 21 pages contains a true, full and complete transcript of all papers and proceedings relative to the appeal in said cause of Wirt Adams, State revenue agent, *v.* Pullman Palace Car Company.

Given under my hand and the seal of said court this 1st day of March, A. D. 1901.

J. T. WHITE, *Clerk*,
By E. D. FONDREN, *D. C.*

| | |
|---|---|
| Clerk's fee for transcript | $7.20 |
| Approving bond | .50 |
| Clerk's certificate | .25 |
| | $7.95 |

Endorsed: Filed March 2, 1901. E. W. Brown, clerk. By W. J. Brown, Jr., D. C.

23 And on the 2nd day of March, A. D. 1901, the following assignment of errors was filed in said cause in words and figures following, to wit:

In the Supreme Court of Mississippi, First District, March Term, 1901.

PULLMAN PALACE CAR COMPANY }
*v.*
WIRT ADAMS, State Revenue Agent. }

*Assignment of Errors.*

Comes the appellant by its attorneys and for error in the record and proceedings in the court below herein assigns the following:

1. The court below erred in overruling defendant's demurrer to plaintiff's declaration.
2. The court below erred in sustaining plaintiff's demurrer to defendant's second plea.
3. The court below erred in sustaining plaintiff's demurrer to defendant's third plea.
4. The court below erred in overruling defendant's motion for new trial.

Wherefore, etc.

McWILLIE & THOMPSON,
*Attorneys for Appellant.*

Endorsed: Filed March 2, 1901. E. W. Brown, clerk. By W. J. Brown, Jr., D. C.

And on the 21st day of March, 1901 a day of the regular March term, 1901 the following order was made in said cause, to wit:

THE PULLMAN COMPANY
*v.*
WIRT ADAMS, State Rev. Agent. } 10025.

Argued orally by T. A. McWillie for appellant and W. R. Harper and W. H. Potter for appellee, and submitted on briefs by McWillie & Thompson for appellant and Harper & Potter for appellee.

And on the 8th day of April. 1901 the following final judgment was rendered by said supreme court, to wit:

24 March Term, A. D. 1901.

APRIL 8, A. D. 1901.

THE PULLMAN COMPANY
*v.*
WIRT ADAMS, State Rev. Agent, Use, &c. } 10025.

This cause having been submitted on a former day of this term on the record herein from the circuit court of Hinds county, first district, and this court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order and adjudge that the judgment of said circuit court rendered in this cause at the January term thereof A. D. 1901 be and the same is hereby affirmed, and that appellee do have and recover of and from appellant, and T. A. McWillie and R. H. Thompson, sureties on appe*la* bond the sum of fourteen hundred and fifty-two ($1,452.00) dollars, being the amount of the judgment in the court below with interest at six per cent. per annum from the date of said judgment until paid, and the further sum of seventy-two $\frac{60}{100}$ dollars, being five per cent statutory damages on appeal, together with the costs of this cause in this court and the court below to be taxed, &c.

*Opinion.*

THE PULLMAN COMPANY
*v.*
WIRT ADAMS, State Rev. Agent, Use, &c. } 10025.

WHITFIELD, *C. J.:*

The statute under construction is in these words:

"SEC. 74. Sleeping cars.—On each sleeping and palace car company carrying passengers from one point to another in this State, $200.00. And in addition thereto, 25 cents a mile for each mile of railroad over which the company runs its cars in this State."

The whole purpose of the statute, from its terms manifestly is, to require a privilege tax to be paid for doing business within this State, and for that business alone. It relates exclusively to
25 the local business done by the Pullman Company within this State. It does not require any tax to be paid for the privi-

lege of doing the interstate business of the company. It does not in any manner effect its interstate business. "It can conduct its interstate business without paying the slightest heed to the act because it does not apply to, or in any degree affect the company in regard to that portion of its business which it has the right to conduct without regulation from the State."

The case of Osborne *v.* Florida, 164 U. S., p. 650, is decisive of this case. The case of Crutcher *v.* Kentucky, 141 U. S., 47, is clearly discriminated from Osborne's case by Mr. Justice Peckham, who there says:

"It has never been held, however, that when the business of the company which is wholly within the State, is but a mere incident to its interstate business, such fact would furnish any obstacle to the valid taxation by the State of the business of the company which is entirely local. So long as the regulation as to the license or taxation does not refer to and is not imposed upon the business of the company which is interstate there is no interference with that commerce by the State statute. It was stated by Mr. Justice Bradley, in the course of his opinion in the Crutcher case that: 'Taxes or license fees in good faith imposed exclusively on express business carried on wholly within the State would be open to no such objection,' viz., an objection that the tax or license was a regulation of, or that it improperly affected, interstate commerce. We have no doubt that this is a correct statement of the law in that regard. The stat-e herein differs from the cases where statutes upon this subject have been held void because in those cases the statutes prohibited the doing of any business in the State whetever unless upon the payment of the fee or tax. It was said as to those cases that as the law made the payment of the fee, or the obtaining of the license a condition to the right to do any business whatever whether interstate or purely local, it was on that account a regulation of interstate commerce and therefore void. Here, however, under the construction as given by the State court, the company suffers no harm from the provisions of the statute. It can conduct its interstate business without paying the slightest heed to the act, because it does not apply to or in any degree affect the company in regard to that portion of its business which it had the right to conduct without regulation from the State.

26 The company in this case need take out no license and pay no tax for doing interstate business, and the statute is therefore valid." In Wirt Adams, rev. agent *v.* Telegraph Co. 71 Miss. 565, afterwards affirmed by the U. S. Supreme Ct., this court said: "Every tax is a burden, and to the extent imposed, is an interference with the pursuit or business upon -hich it is laid. If the business is partly interstate commerce, then that commerce is incidentally affected and interfered with by every tax, of any nature whatever, that may be levied on it. In the case at bar there is no direct burden upon interstate commerce; there is no further interference with it than will be found necessarily to result from the imposition of any burden of taxation in any shape." The contention that the appellant does its local business at a loss, and yet must do

it under the constitution of 1890 making it a common carrier, and hence that its interstate business is indirectly burdened is fallacious. Were that so, it would be the provisions of law declaring the sleeping car companies common carriers, that would contravene the interstate-commerce clause of the Constitution—not this license-tax statute. It is not for the appellant to get all out of the local business the traffic will bear and then escape the correlative burden of this license tax, by pleading that it, though conforming to the law making it a common carrier, as to profits, should not conform to the law taxing the business it does wholly local, and entirely within this State. Pickard *v.* Pullman, 117 U. S. 34 is wholly unlike this case. There a tax was levied on each sleeping car, whether in state, or interstate business and the tax was required to be paid if the local business had been entirely abandoned.

We think the action of the court below clearly right and the judgment is affirmed.

Endorsed: Filed April 18, 1901. E. W. Brown, clerk. By W. J. Brown, Jr., D. C.

27 And afterwards, to wit, on the 22nd day of April, A. D. 1901, the following suggestion of error was filed in said cause in words and figures following, to wit:

28 In the Supreme Court of Mississippi, First District.

PULLMAN PALACE CAR COMPANY }
*v.*
WIRT ADAMS, State Revenue Agent. }

*Suggestion of Error.*

Fearing that the position of the appellant was not stated with requisite clearness in the brief filed on its behalf this suggestion of error is submitted in order to do so with more accuracy.

What we contend for is that by the definite conclusion of the highest source of authority the appellant was not, under its pleas, doing any business in this State in the sense which would subject it to privilege taxation.

The case of Osborne *v.* Florida, 164 U. S. 650 on which the appellee relied was referred to in the brief of appellant because it was relied on by the appellee, but not because it or the case of Crutcher *v.* Kentucky which it reviewed really had any application to the case at bar.

The Osborne case was an express company case, and like the Postal Telegraph Company case decided by our own supreme court (71 Miss. 565), was wholly lacking in those features which mark the present controversy and bring it within the rule announced in Pickard *v.* Pullman Southern Car Co., 117 U. S. 34 as applicable to the peculiar state of facts distinguishing that case from all others passed upon by the Federal Supreme Court.

In the Pickard case the sleeping car company, as in this case, had

leased its cars to railway companies running them on their lines within the State whose privilege-tax law was alleged to have been violated; and as a part of the consideration of the lease were to receive the proceeds of sales of tickets for seats and couches in the cars so leased.

20 In view of the contractual relations of the parties the supreme court held that the service was a single one of carriage and it was immaterial that where the superior accommodations to be found in the sleeping cars were availed of the charge was divided between two recipients. During the term of the lease the railroad company in the exercise of its right as lessee had control of the cars and was empowered to use them in the manner most advantageous to its business without let or hindrance of the sleeping car company. Being this endued for the time being with a qualified ownership, the cars are to be treated as its cars, so far as concerns the business done by them. Suppose instead of a railroad company hiring facilities for comfortable repose, we take the case of a stage-coach line plying between this State and Tennessee which hires improved foot-warmers from a manufacturer in the latter State and uses the same on that portion of its route extending into this State as well as beyond its boundary line; can it be said that the Tennessee manufacturer is subject to a privilege tax in this State on account of such use of its foot-warmers? That the right to use is acquired through a lease and not an absolute sale can make no difference, and if the Pullman Company is operating its cars in Mississippi, so is the Baldwin Company operating all the locomotives now used in this State which have been the subjects of absolute sales to the several railroad companies.

This is the view taken by the Supreme Court of the United States in the Pickard case, where, as here, the sleeping car company had no agents or property in the State and its cars manufactured elsewhere only came into the State as the subjects of a lease to the railroad company. We quote from the opinion in that case as follows:

"The tax was a unit, for the privilege of the transit of the passenger and all its accessories. No distinction was made in the tax between the right of transit, as a branch of commerce between the States, and the sleeping and other conveniences which appertain to a transit in the car. The tax was really one on the right of

30 transit, though laid wholly on the owner of the car. So, too, the *the* service rendered to the passenger was a unit. The car was equally a vehicle of transit, as if it had been a car owned by the railroad company, and the special convenience or comforts furnished to the passenger has been furnished by the railroad company itself. As such vehicle of transit, the car, so far as it was engaged in interstate commerce, was not taxable by the State of Tennessee, and was not subject to its jurisdiction for purposes of taxation; and the plaintiff carried on no business within the State, in the sense in which the carrying on of business in a State is taxable by way of license or privilege."

We further quote the following passage from an opinion of Lord

Coleridge which the above opinion also quotes as being in harmony with the view above expressed:

"We regard the additional accommodation afforded by the sleeping carriages as differing in no essential particular from the superior accommodation afforded by a second-class carriage over a third or by a first-class carriage over both. If the company issued tickets to all passengers alike, at the price charged to passengers travelling in third-class carriages, and then issued tickets, at corresponding prices, to those desiring to travel in a higher class of carriage, it could hardly be contended that duty would not be payable upon the prices paid for such second ticket. The passenger who is content to travel in a third-class or second-class carriage in the day, might well desire to travel in a carriage of a higher class by night; and, in a like manner, a passenger ordinarily travelling by day in a first-class carriage might desire the additional accommodation at night of a sleeping carriage. No separate charge is made in the present case; the charge, though written on a separate ticket, is, in our opinion, part of one charge for the conveyance of the passenger in a particular way, and is, therefore, a part of the charge for the conveyance, received and charged for such conveyance."

We repeat therefore that while under the decision in Os-
31 borne *v.* Florida our statute imposing a privilege tax on sleeping car companies doing business in this State is not violative of the Federal Constitution, that decision is inapplicable to the case in hand because the particular sleeping car company before the court was not on the facts pleaded doing business in this State, although like the company involved in the Pickard case its cars carried some passengers from one point to another within the State.

A misconception of the Pickard case appearing in the brief of the appellee has evidently led the court into error as to the point on which that case turned. We quote from that brief as follows:—

"A careful consideration of that case (Pickard case) will disclose that the privilege tax there levied was a tax upon each and every car run by the company without regard to whether such car was employed in local or interstate business. Under the act then in consideration, it would have been impossible for the company to have operated a single car for interstate business without first having paid such license. Therefore, the court held that the tax was a direct tax upon interstate business. Even if the company had discontinued its local business altogether, it would have been compelled to pay the license tax on all of its cars thereafter used in its interstate business. If no local business be done, no tax is required."

Now there is no amount of care or sagacious scrutiny within mortal power capable of disclosing that the Osborne decision was predicated of the idea that the sleeping car company would be compelled to pay the tax of $50.00 per car even should it abandon all local business. On the contrary, the decision is based on the distinct ground that in view of the status of the sleeping car company arising out of its contractual relations with the railroad company it could not be said to be doing business in Tennessee in the sense which would make it subject to the imposition of a privilege tax.

Moreover it is not true that under our statute the abandonment of all local business would afford any greater immunity from the burden laid upon the interstate business than under the Tennessee law.

32 The $50.00 per car was only a method of measuring the amount of the privilege tax and would remain quite as efficacious for that purpose in case no passengers were carried from point to point within the State. It was not a tax on the cars, but on the business in which the cars were employed. So in the present case the twenty-five cents per mile on the miles of railway over which the defendant's cars are run by the railroads is merely a method of measuring the amount of the tax, and is not a tax on the miles over which the cars are run, but on the business in which the cars are employed.

What reason is there for saying that the company involved in the Pickard case could not, by abandoning its local business, relieve itself of the local burden when we see that the court treats it as exempt from the local burden because it could not be said to be doing a local business, although the cars were in constant use and carried passengers from one point to another in Tennessee. The agreed statement of facts in the Pickard case, it will be remembered, shows that some passengers were carried from one point to another within the State, as in this case 117 U. S. 41.

Manifestly the decision was based upon an interpretation of the relations of the two companies under the contract of lease, and the suggestion advanced by the appellee is wholly unsupported by anything either expressly stated in or to be applied from the opinion and is inconsistent with the facts treated and the fundamental theory upon which the case was decided.

If we depart from the idea that the $50.00 per car and the twenty-five cents per mile were merely methods of measuring a privilege tax on the local business of those engaged in such business, Scylla threatens more darkly than Charybdis, for we would then have the case of a mileage tax imposed upon a company which the supreme court says, in view of the contract of lease, is not engaged in a local business in the sense which subjects such business to a local privilege tax although some passengers are carried on its cars from one point to another within the State. In other words, we would have a State mileage tax on interstate commerce, which no man

33 could defend. Recollecting that nothing is better settled than that the transportation of persons rests on the same plane with that of commodities so far as interstate commerce is concerned, we ask attention to the following extract from the State freight tax case, 8 Wall., 281:

"Merchandise is the subject of commerce. Transportation is essential to commerce, and every burden laid upon it is *pro tanto* a restriction. Whatever therefore may be the true doctrine respecting the exclusiveness of the power vested in Congress to regulate commerce among the States, we regard it as established that no State can impose a tax upon freight transported from State to State or upon the transporter because of such transportation."

As it is adjudged law that one in the situation of appellant is not doing business in the State there is nothing for the law to operate upon so far as it is concerned save its interstate business.

We append an extract from a recent law magazine. Both the text of the article and the authorities are pertinent to the matter in hand.

McWILLIE & THOMPSON,
*Attorneys for Appellant.*

The freedom of interstate commerce from State restrictions is not dependent on the character of the parties that engage in it. That foreign corporations, as well as other persons, have a right to engage in interstate commerce without *without* interference by the State into which the commerce is carried is necessarily decided in a large number of cases. In the language of Mr. Justice Lamar in Norfolk & W. R. Co. *v.* Pennsylvania, 136 U. S. 104, 34 L. ed. 392, "It is well settled by numerous decisions of this court that a State cannot, in the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or impose any burdens upon such commerce within its limits." The only question
open to consideration in respect to the right of a foreign
34 corporation to make sales by agents within a State is whether
or not such sales constitute interstate commerce. If they do, the decisions unquestionably exempt the business from State interference. But this branch of the question is quite as well settled as the other. The drummer cases, such as Robbins *v.* Taxing District of Shelby County, 120 U. S. 489, 30 L. ed. 694, clearly holds that an agent of a non-resident taking orders by sample for goods in another State is engaged in interstate commerce. It seems clear that a sale by sample has no more of the interstate character than a sale made by description or by any other method. And in fact it is said by Mr. Justic Brewer in Brennan *v.* Titusville, 153 U. S. 289, 38 L. ed. 719, in holding that an agent is engaged in interstate commerce when he takes orders for a non-resident manufacturer of picture frames and portraits, that a regulation as to the manner of such sales, "whether by sample or not," is surely a regulation of commerce. The essential thing is that a contract is made between parties of different States for the sale of goods to be shipped from one State into another to complete the contract. Such a sale constitutes interstate commerce, and as to such sales State laws requiring corporations to comply with certain conditions before they can lawfully carry on business cannot have any operation. The right of a foreign corporation to have a place of business, and to carry a stock of goods into the State, is subject to the law of the State. It may be taxed on *on* business of that kind, or excluded altogether. But the right of a foreign corporation to send an agent into the State, and make a contract for the sale therein of a commodity which is then in another State, and is to be shipped into the State to fill the contract, is not subject to any prohibition or regulation by State law. Such a transaction is interstate commerce which is free from State restriction. Therefore, there is no taint of illegality

in the contract, and the right of the corporation to sue in the State to collect the purchase price of the sale is undoubted and absolute.

35 Endorsed: Filed April 22, 1901. E. W. Brown, clerk.

And afterwards, to wit, on the 20th day of May, A. D. 1901, being a day in said March term, 1901 of said supreme court the following order was made and entered in said cause to wit:

THE PULLMAN COMPANY
*v.*
WIRT ADAMS, State Rev. Agent, Use, &c. } 10025.

*Suggestion of Error Overruled.*

And afterwards, to wit, on the 25th day of June, 1901, a petition for writ of error was filed in said cause, which said writ is in words and figures following, to wit:

36 THE UNITED STATES OF AMERICA,
*State of Mississippi.*

THE PULLMAN COMPANY, THOMAS A. McWILLIE, and Robert H. Thompson
*v.*
WIRT ADAMS, State Revenue Agent. } Petition for Writ of Error.

To the Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi:

The petition of the Pullman Company and Thomas A. McWillie and Robert H. Thompson respectfully shows:

That on the 8th day of April, A. D. 1901, the said supreme court rendered a judgment against petitioner in a certain cause wherein your petitioner The Pullman Company was the appellant, and Wirt Adams, State revenue agent of the State of Mississippi was the appellee, a judgment was rendered affirming the judgment of the circuit court for the first district of Hinds county in said State and rendering judgment against said Pullman Company for the sum of fourteen hundred and fifty-two dollars and interest thereon from the 6th day of February, A. D. 1901, at the rate of six per cent. per annum until paid together with all the costs of said cause, and also against the said Thomas A. McWillie and Robert H. Thompson, as sureties on its appeal bond for the costs of said cause in said supreme court; that in said suit was drawn in question the validity of a certain statute of the State of Mississippi on the ground of the same being repugnant to the Constitution of the United States, and the decisions of said supreme court was in favor of the validity of such statutes; and that in said suit was also drawn in question the validity of an authority exercised by the said Wirt Adams, State revenue agent, under the said statutes of said State on the ground that the same is repugnant to the Constitution of the United States, and

the decision of the said supreme court was in favor of the
37 validity of such authority; and the decision of the said supreme court of the State of Mississippi was final, and the said supreme court is the highest court of resort in said State.

Wherefore and whereby petitioners are aggrieved and they pray for a writ of error, with citation and supercedeas, returnable into the Supreme Court of the United States on the —.

And as in duty bound they will ever pray, &c.

THE PULLMAN COMPANY,
By McWILLIE & THOMPSON, *Att'ys.*
THOMAS A. McWILLIE.
ROBERT H. THOMPSON.

Endorsed: Filed June 25, 1901. E. W. Brown, clerk, by W. J. Brown, Jr., D. C.

STATE OF MISSISSIPPI:

Desiring to give petitioners an opportunity to test in the Supreme Court of the United States the questions presented in the foregoing petition and in the assignment of errors by which it is accompanied, it is ordered that a writ of error be, and the same is hereby, allowed to the said court, and that the same be made a supercedeas bond in the penal sum of three thousand dollars, also herewith presented, being hereby approved.

In testimony whereof witness my hand this 28 day of June, A. D. 1901.

ALBERT H. WHITFIELD,
*Chief Justice Supreme Court, State of Mississippi.*

Endorsed: Filed June 25, 1901. E. W. Brown, clerk, by W. J. Brown, Jr., D. C.

38 STATE OF MISSISSIPPI:

In the Supreme Court, March Term, 1901.

THE PULLMAN COMPANY
*v.*
WIRT ADAMS, State Revenue Agent.

I, Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi at the present time and upon the argument and hearing of the above-entitled appeal, do hereby certify:

1. That upon said argument and hearing the validity of certain legislation of said State, viz: section 3387 of the Annotated Code of 1892, of said State, imposing a tax upon sleeping and palace car companies, was drawn in question by the Pullman Company on the ground of such legislation being repugnant to clause 3 section 8 of article 1 of the Constitution of the United States in that such legislation imposed a burden upon and constituted a regulation of the commerce carried on by the said Pullman Company among the

States; and that the decision of the said supreme court of Mississippi was in favor of the validity of such legislation.

2. That upon said argument and hearing was drawn in question the validity of an authority exercised by said Wirt Adams, State revenue agent of the State of Mississippi, in demanding payment and attempting by suit to coerce payment by the Pullman Company under said section 3387 of the Annotated Code of said State of the privilege taxes thereby imposed on sleeping car companies and palace car companies carrying passengers from one point to another in said State on the ground that the same is repugnant to clause 3 of section 8 of article 1 of the Constitution of the United States in that the exercise of such imposed a burden upon and constituted a regulation of the commerce among the States carried on by the said Pullman Company; and that the decision of the said supreme court of Mississippi was in favor of the validity of such authority.

39 In witness whereof I have hereto subscribed my name this — day of ——, A. D., 1901.

ALBERT H. WHITFIELD,
*Chief Justice of Supreme Court of Mississippi.*

Endorsed: Filed June 28, 1901. E. W. Brown, clerk, by W. J. Brown, Jr., D. C.

I, E. W. Brown, clerk of the supreme court of the State of Mississippi do hereby certify that the Honorable Albert H. Whitfield, by whom the foregoing certificate was made and given, was at the time of making and giving the same, and is now chief justice of the supreme court of Mississippi, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature subscribed thereto is genuine.

In witness whereof I have hereto set my hand and affixed the seal of the supreme court of Mississippi, this the 11th day of July, A. D. 1901.

[Seal State of Mississippi Supreme Court.]

E. W. BROWN, *Clerk*,
By W. J. BROWN, Jr., *D. C.*

40 Know all men by these presents that we, The Pullman Company, principal, and Thomas A. McWillie and Robert H. Thompson, principals, and John Hart and J. C. Ward sureties, are held and firmly bound unto Wirt Adams, State revenue agent of the State of Mississippi, in the full and just sum of three thousand dollars, to be paid to the said Wirt Adams, revenue agent, his successors in office, or his certain attorney, executors or administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of June, in the year of our Lord, nineteen hundred and one.

Whereas lately, at a supreme court of the State of Mississippi, in

a suit depending in said court between The Pullman Company, appellant, and Wirt Adams, State revenue agent of the State of Mississippi, appellee, a judgment was rendered against the said Pullman Company and Thomas A. McWillie and Robert H. Thompson, sureties on its appeal bond, and the said Pullman Company and the said McWillie and Thompson obtained a writ of error and filed a copy thereof in the clerk's office in the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Wirt Adams, State revenue agent, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Pullman Company, Thomas A. McWillie and Robert H. Thompson shall prosecute this writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

THE PULLMAN COMPANY, [SEAL.]
By McWILLIE & THOMPSON, *Att'ys.*
ROBERT H. THOMPSON. [SEAL.]
TH'S A. McWILLIE. [SEAL.]
JOHN HART. [SEAL.]
J. C. WARD. [SEAL.]

I approve this bond.
June 28th, 1901.

ALBERT H. WHITFIELD,
*Ch. J. Sup. Ct., Miss.*

[Endorsed:] 10025. The Pullman Company *et al. v.* Wirt Adams, State revenue agent Writ of error bond. Filed June 28, 1901. E. W. Brown, clerk, by W. J. Brown, Jr., D. C.

41 I, E. W. Brown, clerk of the supreme court of the State of Mississippi, do hereby certify that this and the foregoing and annexed forty pages contain a full, true and correct copy of the record and proceedings in the case of The Pullman Company vs. Wirt Adams, State revenue agent, use &c. lately pending in said supreme court and numbered 10025 on the docket of said court, together with a copy of the written opinion of said court on confirming the judgment of the circuit court of the first district of Hinds county, Mississippi.

In testimony whereof, witness my hand and the seal of said supreme court of Mississippi, this 11th day of July, A. D. 1901.

[Seal State of Mississippi Supreme Court.]

E. W. BROWN, *Clerk*,
By W. J. BROWN, JR., *D. C.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and the pleadings and also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit, between The Pullman Company and Wirt Adams, State revenue agent, and wherein judgment was rendered in favor of said plaintiff in said court on the 8th day of April, A. D. 1901, against said defendant in said court, said Pullman Company, and Thomas A. McWillie and Robert H. Thompson, its sureties, and in which suit was drawn in question the validity of certain statutes of the State of Mississippi, on the ground of their being repugnant to the Constitution of the United States and the decision of the said supreme court was in favor of the validity of such statutes; and that in said suit was also drawn in question the validity of an authority exercised by the said Wirt Adams, State revenue agent, under the said statutes of said State on the ground that the same is repugnant to the Constitution of the United States, and the decision of the said supreme court was in favor of the validity of such authority, a manifest error hath happened to the great damage of said Pullman Company and of said Thomas A. McWillie and Robert H. Thompson, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at

43 Washington, on the 25th day of July next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 28th day of June, in the year of our Lord nineteen hundred and one.

Witness also my signature and the seal of the circuit court of the United States in and for the southern district of Mississippi this the day and year aforesaid.

[Seal U. S. Circuit Court, District of Mississippi, Southern Circuit.]

L. B. MOSELEY, *Clerk.*

In obedience to the within writ of error I herewith return the same and send therewith to the Supreme Court of the United States, under my hand and the seal of the supreme court of Mississippi, directly and openly the record and proceedings in the cause in said writ mentioned with all things concerning the same.

In testimony whereof witness my signature and the seal of said supreme court of Mississippi this 11th day of July, 1901.

[Seal State of Mississippi Supreme Court.]

E. W. BROWN, *Clerk*,
By W. J. BROWN, JR., *D. C.*

[Endorsed:] 10025. The Pullman Company *et al. v.* Wirt Adams, State rev. agt. Writ of error. Filed June 28, 1901. E. W. Brown, clerk, by W. J. Brown, Jr., D. C.

44 UNITED STATES OF AMERICA, *ss:*

To Wirt Adams, State revenue agent of the State of Mississippi, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the supreme court of the State of Mississippi, wherein The Pullman Company and Thomas A. McWillie and Robert H. Thompson are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert H. Whitfield, chief justice of the supreme court of the State of Mississippi, this 28th day of June, 1901.

ALBERT H. WHITFIELD,
*Chief Justice of the Supreme Court of Mississippi.*

To the U. S. marshal, so. dist. of Mississippi to execute and return.

[Seal U. S. Circuit Court, District of Mississippi, Southern Circuit.]

L. B. MOSELEY, *Clerk.*

June 29, 1901.

[Endorsed:] Entered, No. 465, page 94. The Pullman Company *et al. v.* Wirt Adams, State revenue agent. Citation.

45 UNITED STATES OF AMERICA, }
*Southern District of Mississippi.* }

Received the within citation on the 29th day of June 1900, and served the same on the same day on Wirt Adams, State revenue agent of the State of Mississippi, personally by reading the same to him, and also by delivering to him in his own hands a true and exact copy of the same; also delivered to him at the same time a true and exact copy of the writ of error in the cause mentioned in said citation, issued pursuant to the order allowing the same of the Hon. Albert H. Whitfield, chief justice of the supreme court of

Mississippi, by L. B. Moseley, clerk of the circuit court of the United States in and for the southern district of Mississippi.

This the 29 day of June A. D. 1901.

F. W. COLLINS,
*U. S. Marshal,*
By R. O. EDWARDS,
*Deputy U. S. Marshal.*

Marshal's fees, $2.00.

UNITED STATES OF AMERICA,
*Southern District of Mississippi.*

Personally appeared before me, L. B. Moseley, clerk of the circuit court of the United States in and for the southern district of Mississippi R. O. Edwards deputy marshal of the United States in and for the district aforesaid, duly appointed according to law, who being by me first duly sworn, on oath saith that the foregoing return made by him of a service of the citation and copy of the writ of error in this case of The Pullman Company, plaintiff in error against Wirt Adams State revenue agent defendant in error, made on the — day of ——, 1901, is true in every particular.

R. O. EDWARDS.

Sworn to and subscribed before me this 29 day of June 1901.

[Seal U. S. Circuit Court, District of Mississippi, Southern Circuit.]

L. B. MOSELEY, *Clerk.*

[Endorsed:] 10025. The Pullman Company *et al. v.* Wirt Adams, State revenue agent. Citation & return of service. Filed July 4, 1901. E. W. Brown, cl'k, by W. J. Brown, Jr., D. C.

46 In the Supreme Court of the United States.

THE PULLMAN COMPANY ET AL., Plaintiffs in Error,
*v.*
WIRT ADAMS, State Revenue Agent, Defendant in Error.

*Assignment of Errors.*

Afterwards to wit on the — day of —— in the year of our Lord nineteen hundred and one before the justices of the Supreme Court of the United States at the Capitol in the city of Washington comes The Pullman Company and Thomas A. McWillie and Robert H. Thompson, plaintiffs in error, by their attorney, and the attorney of each of them, John S. Runnells, and say that in the record and proceedings aforesaid there is manifest error in the particulars following, to wit:

The said supreme court of the State of Mississippi erred in rendering the judgment of April 8, 1901, whereby the section 3387 of the Annotated Code of 1892 of said State was given effect as imposing a valid privilege tax upon the Pullman Company and the com-

merce between the States carried on by said company was burdened and regulated by said State legislation, contrary to clause 3, section 8, article I of the Constitution of the United States.

2. The said supreme court erred in holding that the circuit court of Hinds county committed no error in sustaining the demurrer of the plaintiff, said Wirt Adams, State revenue agent, to the second plea of the defendant, The Pullman Company, the effect whereof was violative of clause 3 of section 8 of article I of the Constitution of the United States, as being in derogation of the power of the Congress of the United States to regulate commerce among the States.

3. The said supreme court erred in holding that the circuit court of Hinds county committed no error in sustaining the demurrer of the plaintiff, said Wirt Adams, State revenue agent, to the third plea of the defendant, The Pullman Company, the effect whereof
47 was violative of clause 3 of section 8 of article I of the Constitution of the United States as being in derogation of the power of the Congress of the United States to regulate commerce among the States.

4. The said supreme court erred in holding that the circuit court of Hinds county committed no error in charging the jury at plaintiff's request to find for the plaintiff, the said Wirt Adams, State revenue agent, the effect whereof was violative of clause 3 of section 8 of article I of the Constitution of the United States as being in derogation of the power of the Congress of the United States to regulate commerce among the States.

Wherefore the said plaintiffs in error pray that the said final judgment of the supreme court of Mississippi be reversed etc.

JOHN S. RUNNELLS,
*Attorney for Plaintiffs in Error.*

Fee for making this transcript $24.75 paid by the Pullman Company per McWillie & Thompson.

E. W. BROWN, *Clerk*,
By W. J. BROWN, JR., *D. C.*

[Endorsed:] 10025. The Pullman Company *et al. v.* Wirt Adams State rev. agt. Assignment of errors. Filed June 28, 1901. E. W. Brown, clerk, by W. J. Brown, Jr., D. C.

Endorsed on cover: File No. 18,230. Mississippi supreme court. Term No. 377. The Pullman Company, plaintiff in error, *vs.* Wirt Adams, State revenue agent. Filed July 18th, 1901.

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